

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
JOHNSTOWN DIVISION**

ERIC J. JOHNSON,)
Petitioner,) Civil Action No. 3:23-cv-00044
vs.) Chief United States District Judge
WARDEN MICHAEL UNDERWOOD,) Mark R. Hornak
Respondent.)

MEMORANDUM OPINION ADOPTING REPORT AND RECOMMENDATION

Petitioner, Eric J. Johnson, initiated this action on March 10, 2023, by filing a pro se “Motion to Pursuant 28 U.S.C. § 2241 Writ of Habeas Corpus.” (ECF No. 1). Respondents filed a response to the petition. (ECF No. 11). The action was referred to a Magistrate Judge for the making of reports and recommendations.

The Magistrate Judge issued a Report and Recommendation (“R&R”), ECF No. 14, recommending that the action be dismissed with prejudice as a successive petition pursuant to the abuse of writ doctrine. Alternatively, it was recommended that if the Court were to consider the petition on its merits, the petition be denied as the record clearly shows Petitioner’s federal sentence was properly calculated by the BOP. Additionally, it was recommended that Petitioner’s request for compassionate release be dismissed. Petitioner filed timely objections. ECF No. 15. Accordingly, this matter is ripe for disposition.

With respect to disposition matters, the reviewing district court must make a *de novo* determination of those portions of the magistrate judge’s report and recommendation to which objections are made. 28 U.S.C. § 636(b)(1)(B)-(C); Fed. R. Civ. P. 72(b)(3). “The district judge

may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3).

Upon review of the filings, and the record before the Court, and upon *de novo* review, the Court concludes that the Objections are not well-taken and are, therefore, overruled, in that they consist of either disagreements with the conclusions of the R&R or do not alter the conclusion of the R&R. The Court accepts and adopts the R&R in its entirety as the Opinion of the Court. Petitioner’s Objections to the R&R are overruled and the petition will be and is dismissed with prejudice as a successive petition pursuant to the abuse of writ doctrine. *See King v. Fed. BOP*, 285 F. App’x 2, 4 (3d Cir. 2008) (holding that second or successive § 2241 petitions are governed by the “abuse of the writ” doctrine). Additionally, Petitioner’s request for compassionate release will be dismissed but without prejudice to its presentation to the sentencing court.

An appropriate Order follows.

Dated: December 26, 2024

BY THE COURT:

s/Mark R. Hornak
Mark R. Hornak
Chief United States District Judge

cc: ERIC J. JOHNSON
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